

REMARKS

A brief summary of the history of this application will facilitate an understanding of the present Preliminary Amendment.

A "Final" Office Action was issued on May 28, 2004, at the conclusion of the original examination of this application. The applicant initially filed an Amendment After Final Action on July 30, 2004. By an Advisory Action issued August 19, 2004, the Amendment After Final Action was refused entry on the grounds that the proposed amendments raised new issues that would require further consideration and/or search. Accordingly, as referenced above, the applicant proceeded to timely file an "RCE" on August 30, 2004, within the shortened three-month period for response set in the Final Office Action.

Because the Advisory Action of August 19, 2004, had also indicated certain informalities in the Amendment After Final Action, the applicant subsequently filed on October 7, 2004, a "Corrected Amendment After Final Action," in order to correct the informalities in the first Amendment After Final Action. It appears that this paper may have caused confusion insofar as it was titled "Corrected Amendment After Final Action." Since the "Corrected Amendment After Final Action" was filed subsequent to the filing of the RCE, it perhaps would have been more appropriate to have titled the paper as a "Preliminary Amendment" in that the filing of the RCE in itself constituted a timely response to the Final Office Action and, therefore, the time period for response to the Final Office Action accordingly was no longer running.

Subsequently, the undersigned attorney for the applicant received a telephone message from Examiner Boyd on November 9, 2004, stating that the Corrected Amendment After Final Action of October 7, 2004, was deemed to be untimely because

it was submitted without a request for extension of time or an extension of time fee after the shortened three-month period for response to the Final Office Action had run. The undersigned attorney for applicant conferred by telephone the following day on November 10, 2004, with Examiner Boyd to inform her that the "Corrected Amendment After Final Action" was intended to be treated as a Preliminary Amendment in the continuing examination of the application under the previously filed RCE. Ms. Boyd informed the undersigned attorney that there was no RCE in her file and, accordingly, requested the undersigned attorney to fax a copy of the RCE to her, which the undersigned then sent on November 10, 2004, along with a copy of the post card acknowledgement of the PTO date stamped August 30, 2004, reflecting that the RCE was timely filed within the three-month shortened period running from the Final Office Action.

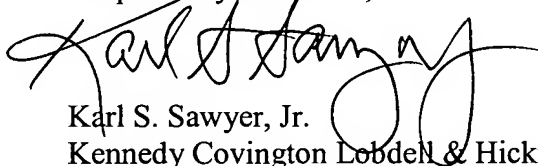
Now, the applicant has received a further Advisory Action dated November 18, 2004, stating that "the amendment document filed on 11-10-04 is considered non-compliant", apparently because of the same informalities in the Amendment After Final Action of July 30, 2004, which was submitted as part of the RCE filing. This Advisory Action is confusing to the applicant in that (a) the fax transmission to Examiner Boyd on November 10 was not intended to be treated as a filing of a new amendment, but instead was submitted at her request merely to provide her with a copy of the RCE which apparently was absent from the PTO file, (b) it continues to be unclear to the applicant whether the PTO has indeed received the RCE and associated such with this application file, and (c) in turn, it is unclear whether the "Corrected Amendment After Final Action" has been entered for purposes of proceeding with continuing examination under the RCE.

Accordingly, by this "Preliminary Amendment," the applicant is re-submitting the corrected amendments to the claims previously submitted via the "Corrected Amendment After Final Action" of October 7, 2004 (although the applicant once again reiterates that the "Corrected Amendment After Final Action" should have been treated as timely following the filing of the RCE and should have been entered for purposes of proceeding with continuing examination of the application).

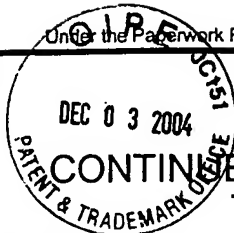
In case the PTO still has not associated the RCE with this file, the applicant submits herewith another copy of the RCE in its entirety, including a copy of the Amendment After Final Action submitted July 30, 2004, which formed a part of the RCE. A copy of the Express Mail transmittal form reflecting the Postal Service's "date in" receipt of the RCE package on August 30, 2004, and a copy of the postal card acknowledgment of the RCE filing transmitted back to the applicant with the PTO's date stamp of August 30, 2004, are also attached.

In view of the all of the foregoing, it is respectfully submitted that this application is in proper condition for proceeding with continuing examination under the RCE and the applicant respectfully requests prompt examination without further delay.

Respectfully submitted,



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-- Attorney for Applicant



REQUEST FOR CONTINUED EXAMINATION (RCE) TRANSMITTAL

Address to:
Mail Stop RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Application Number	10/010,468
Filing Date	November 8, 2001
First Named Inventor	Marvin Lewis, Jr.
Art Unit	1771
Examiner Name	Jennifer A. Boyd
Attorney Docket Number	0018622.00007

This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application.
Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See Instruction Sheet for RCEs (not to be submitted to the USPTO) on page 2.

- Submission required under 37 CFR 1.114** Note: If the RCE is proper, any previously filed unentered and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).
 - ☒ Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.
 - ☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed on _____
 - ☒ Other Amendment After Final filed July 30, 2004
 - ☐ Enclosed
 - ☐ Amendment/Reply
 - ☐ Affidavit(s)/Declaration(s)
 - ☐ Information Disclosure Statement (IDS)
 - ☐ Other _____
- Miscellaneous**
 - ☐ Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of _____ months. (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)
 - ☐ Other _____
- Fees** The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.
 - ☒ The Director is hereby authorized to charge the following fees, or credit any overpayments, to Deposit Account No. 18-1215
 - ☒ RCE fee required under 37 CFR 1.17(e)
 - ☐ Extension of time fee (37 CFR 1.136 and 1.17)
 - ☐ Other _____
 - ☒ Check in the amount of \$ 385.00 enclosed
 - ☐ Payment by credit card (Form PTO-2038 enclosed)

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

Name (Print / Type)	Karl S. Sawyer, Jr.	Registration No. (Attorney / Agent)	28,902
Signature		Date	August 30, 2004

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Name (Print / Type)	Janet L. Babaa	Date	August 30, 2004
Signature			

This collection of information is required by 37 CFR 1.114. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing the burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Application of:

Marvin Lewis, Jr.) Patent Examiner: Jennifer A. Boyd
Serial No.: 10/010,468)
Filed: November 8, 2001) Group Art Unit: 1771
For: CROCHET-KNITTED)
MATTRESS CLOSING)
TAPE)

Charlotte, North Carolina, July 30, 2004

Mail Stop Amendments After Final
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

AMENDMENT AFTER FINAL ACTION

Sir:

This paper is submitted pursuant to 37 CFR 1.116 in response to the "Final" Office Action dated May 28, 2004, for purposes of placing this application in condition for allowance or, alternatively, in better condition for appeal. Reconsideration of this application in light of the following amendments and remarks is respectfully requested.

Amendments to the claims of this application appear on pages 2-3 of this paper.

The Applicant's remarks in response to the Office Action begin on page 4 of this paper.

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Typed Name:	Donna B. Millard
Signature:	<i>Donna B. Millard</i>

Amendments In the Claims:

1. (Currently Amended) A mattress closing tape comprising a narrow-width inelastic textile fabric band formed of a set of inelastic warp yarns and multiple inelastic fillings inter-knitted in a crochet warp knitted construction having a base fabric layer and a patterned fabric layer each extending substantially the full lengthwise and widthwise extent of the band and integrally-knitted together in overlying substantially coextensive relation to one another in an inelastic fabric structure which is substantially flat in cross-section and sufficiently flexible to be adapted to closely conform to an edge bead of a mattress.
2. (Original) A mattress closing tape according to claim 1, further comprising at least four fillings.
3. (Original) A mattress closing tape according to claim 2, wherein two base fillings traverse the full widthwise extent of the tape to form a base fabric structure and two pattern fillings traverse relative to one another to form a predetermined pattern.
4. (Original) A mattress closing tape according to claim 3, wherein the base fillings are formed at the technical face of the tape and the pattern fillings are formed at the technical back of the tape.
5. (Original) A mattress closing tape according to claim 3, wherein one base filling comprises a single filling yarn, the other base filling comprises a single filling yarn, one pattern filling comprises multiple filling yarns and the other pattern filling comprises multiple filling yarns.
6. (Original) A mattress closing tape according to claim 3, wherein the base fillings traverse in opposing mirror-image relation to one another and the pattern fillings traverse in opposing mirror-image relation to one another.
7. (Original) A mattress closing tape according to claim 6, wherein the pattern fillings form a diamond pattern.
8. (Cancelled).
9. (Currently amended) In combination with a mattress having an edge bead, a mattress closing tape covering and closely conforming to the edge bead of the mattress, the mattress closing tape comprising a narrow-width inelastic textile fabric band formed of a set of inelastic warp yarns and multiple inelastic fillings inter-knitted in a crochet warp knitted construction having a base fabric layer and a patterned fabric

layer each extending substantially the full lengthwise and widthwise extent of the band and integrally-knitted together in overlying substantially coextensive relation to one another in an inelastic fabric structure which is substantially flat in cross-section.

10. (Previously added) The combination according to claim 9, further comprising at least four fillings.

11. (Previously added) The combination according to claim 10, wherein two base fillings traverse the full widthwise extent of the tape to form a base fabric structure and two pattern fillings traverse relative to one another to form a predetermined pattern.

12. (Previously added) The combination according to claim 11, wherein the base fillings are formed at the technical face of the tape and the pattern fillings are formed at the technical back of the tape.

13. (Previously added) The combination according to claim 11, wherein one base filling comprises a single filling yarn, the other base filling comprises a single filling yarn, one pattern filling comprises multiple filling yarns and the other pattern filling comprises multiple filling yarns.

14. (Previously added) The combination according to claim 11, wherein the base fillings traverse in opposing mirror-image relation to one another and the pattern fillings traverse in opposing mirror-image relation to one another.

15. (Previously added) The combination according to claim 14, wherein the pattern fillings form a diamond pattern.

REMARKS

In the aforesaid Office Action of May 28, 2004, claims 1-6 and 9-14 have been finally rejected under 35 U.S.C. §102(b) as assertedly anticipated by Vailati et al U.S. Pat. 4,551,994, and claims 7 and 15 has been rejected under 35 U.S.C. §103(a) as assertedly obvious over Vailati et al. For the reasons more fully discussed below, the applicant respectfully disagrees and traverses these rejections. Applicant submits herewith amendments to the claims which the applicant submits do not raise new issues of patentability and place the claims in condition for allowance or, alternatively, in better condition for appeal. Hence, the Applicant submits that such amendments are entitled to entry in this case. Reconsideration and allowance of this application is respectfully requested.

The present invention resides in a so-called mattress closing tape, i.e., a narrow-width longitudinal band used to enclose a perimeter edge cord or bead in the upholstery of mattresses and box springs. In contrast to the prior art, the present mattress closing tape is uniquely fabricated of an inelastic crochet warp knitted construction comprised of both warp and filling yarns inter-knitted with each other. More particularly, the warp knitted structure of the tape interknits a set of warp yarns and multiple fillings forming base and pattern fabric layers integrally-knitted together in overlying essentially coextensive relation along and across predominantly the full lengthwise and widthwise extents of the band in an inelastic fabric structure which is substantially flat in cross-section and sufficiently flexible to be adapted to closely conform to an edge bead of a mattress. Independent claims 1 and 9 have been amended to clarify these distinguishing characteristics of the mattress closing tape.

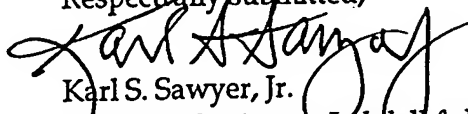
It is respectfully submitted that the Vailati et al reference fails to disclose or even remotely suggest the claimed features of the present mattress closing tape. While the Vailati et al reference admittedly teaches a crochet-type narrow-width warp-knitted band, the band would be unsuitable for, and indeed, would be essentially incapable of acceptable use as, a mattress closing tape. In particular, it is fundamental to the teachings of the Vailati et al reference that their band comprises elastic yarns so as to have an elastic character suitable for use as a waistband fabric in apparel items. By contrast, the mattress closing tape of the present invention comprises inelastic yarns such that the band itself is inelastic. This feature of Vailati et al is so central and essential

to the invention of Vailati et al that it would represent a total departure from Vailati et al to modify or eliminate the provision of the elastic yarns, yet it is precisely the elasticity imparted to Vailati et al that prevents their band from being reasonably usable or adaptable as a mattress closing tape. Hence, the teachings Vailati et al neither anticipate nor render obvious the present mattress closing tape but, on the contrary, teach away from the present invention.

Further, the Vailati et al reference does not anticipate or render obvious the dual layer knitted construction of the present mattress closing tape as defined in the present claims. Specifically, as recited in each of the independent claims, the warp and filling yarns making up the present mattress closing tape are warp-knitted into base and patterned fabric layers which are integrally knitted with one another in overlying relation along essentially the full lengthwise and across essentially the full widthwise extent of the band. The Office Action asserts that Vailati et al's plain and roll resistant portions of their band constitute base and patterned fabric layers, but such layers are connected only in edgewise relation and therefore do not and cannot overlie one another nor extend coextensively over substantially the full width and full length of the Vailati et al band. In the present mattress closing tape, the base and patterned fabric layers are formed integrally by interknitting the warp and filling yarns together in overlying relation coextensively widthwise and lengthwise, which is not accomplished by the Vailati et al band.

Thus, it is respectfully submitted that Vailati et al fails entirely to anticipate or render obvious the present crochet-knitted mattress closing tape. For all of the reasons set forth above, it is respectfully submitted that the claims of this application patentably define the present invention over the cited prior art. Favorable reconsideration and issuance of a Notice of Allowance are respectfully requested.

Respectfully submitted,



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In re: Marvin Lewis, Jr.; Serial No.: 107630468; Filing Date: November 8, 2001; For:
CROCHET-KNITTED MATTRESS CLOSING TAPE

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Applicant(s): Marvin Lewis, Jr.

DEC 03 2004

Docket No.

0018622.00007

Application No.

10/010,468

Filing Date

November 8, 2001

Examiner

Jennifer A. Boyd

Customer No.

21878

Group Art Unit

1771

Invention: **CROCHET-KNITTED MATTRESS CLOSING TAPE**

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